

SJL LAW LLP  
Julian G. Senior (SBN: 219098)  
Marcelo Lee (SBN: 271980)  
Corinne D. Orquiola (SBN 226969)  
841 Apollo Street, Suite 300  
El Segundo, CA 90245  
Tel. No.: 424.290.0720  
Fax No.: 424.290.0721  
[mail@sjllegal.com](mailto:mail@sjllegal.com) (service at any other email address is invalid)

Attorneys for Defendant KIA AMERICA, INC.

**UNITED STATE DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA- OAKLAND DIVISION**

BETHAN C. LAMB,

Plaintiff,

vs.

KIA AMERICA, INC, a  
corporations; and DOES 1 through  
10, inclusive,

Defendants.

**CASE NO.: 4:22-cv-5434**

Assigned to:  
Department:

**DECLARATION OF JULIAN G.  
SENIOR, IN SUPPORT OF  
DEFENDANT KIA AMERICA, INC.'S  
NOTICE OF REMOVAL;  
SUPPORTING EXHIBITS 1-2**

Action Filed: August 17, 2022  
Trial: None

**DECLARATION OF JULIAN G. SENIOR**

I, Julian G. Senior, declare as follows:

1. I am an attorney admitted to practice before all courts of the State of California and the United States District Court for the Northern District of California. I am an attorney at SJL Law LLP, attorneys of record for Kia America, Inc. ("KA"). This declaration is offered in support of KA's Notice of Removal to the United States District Court for the Northern District of California under 28

1 U.S.C. § 1331. I have personal knowledge of all the facts set forth herein, and if  
2 called upon to do so by the Court, could and would testify competently thereto. As  
3 to those matters stated upon information and belief, I am informed and believe  
4 such matters to be true.

5 2. KA was served with a copy of Plaintiff's Summons and Complaint on  
6 August 23, 2022, through its designated agent for service of process, CT  
7 Corporation System (a corporation service company). It was on that date that KA  
8 received, through service or otherwise, a copy of the pleading, Motion, Order or  
9 other paper from which it could first be ascertained that the case is one which is  
10 removable. A true and correct copy of Plaintiff's Summons, Civil Case Cover  
11 Sheet, Complaint, and the Notice of Case Assignment received by KA is attached  
12 hereto as Exhibit 1.

13 3. KA answered Plaintiff's Complaint on September 22, 2022. A true  
14 and correct copy of KA's Answer is attached hereto as Exhibit 2.

15 4. No other proceedings have been had in the state court action.

16 I declare under penalty of perjury under the laws of the State of California  
17 and the United States of America that the foregoing is true and correct.

18 Executed this 23rd day of September 2022, at El Segundo, California.

19  
20 /s/ Julian G. Senior

21 Julian G. Senior  
22 Declarant  
23  
24  
25  
26  
27  
28

# EXHIBIT 1



08/23/2022

CT Log Number 542178855

## Service of Process Transmittal Summary

**TO:** Mark Goldzweig  
Kia Motors America, Inc.  
111 Peters Canyon Rd  
Irvine, CA 92606-1790

**RE:** Process Served in California

**FOR:** KIA MOTORS AMERICA, INC. (Former Name) (Domestic State: CA)  
Kia America, Inc. (True Name)

### ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

**TITLE OF ACTION:** Re: BETHAN C. LAMB // To: Kia America, Inc.

**DOCUMENT(S) SERVED:** Summons, Complaint, Cover Sheet, Notice(s), Certificate

**COURT/AGENCY:** Alameda County - Superior Court - California, CA  
Case # 22CV016334

**NATURE OF ACTION:** Product Liability Litigation - Lemon Law - 2019 KIA NIRO, VIN: KNDCC3LG8K2014880

**PROCESS SERVED ON:** C T Corporation System, GLENDALE, CA

**DATE/METHOD OF SERVICE:** By Process Server on 08/23/2022 at 12:57

**JURISDICTION SERVED:** California

**APPEARANCE OR ANSWER DUE:** Within 30 calendar days after this summons and legal papers are served on you

**ATTORNEY(S)/SENDER(S):** Neal F. Morrow III  
MFS Legal, Inc.  
5318 East 2nd Street #490  
Long Beach, CA 90803  
562-379-2654

**ACTION ITEMS:** CT has retained the current log, Retain Date: 08/24/2022, Expected Purge Date: 08/29/2022

Image SOP

Email Notification, Mark Goldzweig Mgoldzweig@kiausa.com

Email Notification, Debbie Avalos davalos@kiausa.com

Email Notification, Wendy Seeley wseeley@kiausa.com

Email Notification, Marisa Sanchez msanchez@kiausa.com

Email Notification, Robert Hyatt rhyatt@kiausa.com

Email Notification, Samantha Hughes shughes-contracted@kiausa.com

Email Notification, Madeline Skitzki mskitzki-contracted@kiausa.com

**REGISTERED AGENT CONTACT:** C T Corporation System  
330 N BRAND BLVD  
STE 700



**CT Corporation**  
**Service of Process Notification**

08/23/2022

CT Log Number 542178855

GLENDALE, CA 91203  
866-331-2303  
CentralTeam1@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



**PROCESS SERVER DELIVERY DETAILS**

**Date:** Tue, Aug 23, 2022  
**Server Name:** GERARDO MARTINEZ

|               |                          |
|---------------|--------------------------|
| Entity Served | KIA MOTORS AMERICA, INC. |
| Case Number   | 22CV016334               |
| Jurisdiction  | CA                       |

|         |  |  |
|---------|--|--|
| Inserts |  |  |
|         |  |  |



# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

**KIA AMERICA, INC.**, a corporation, and DOES 1 through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
BETHAN C. LAMB

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Alameda

08/17/2022

Chad Finke, Executive Officer / Clerk of the Court

By: A. Linhares Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Superior Court of California, County of Alameda  
Rene C. Davidson County Courthouse  
1225 Fallon Street  
Oakland, CA 94612

CASE NUMBER:  
(Número del Caso):

**22CV016334**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Neal F. Morrow III MFS Legal, Inc. 5318 East 2nd Street #490 Long Beach, CA 90803 (562) 379-2654

DATE: 08/17/2022 Chad Finke, Executive Officer / Clerk of the Court Clerk, by A. Linhares Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): KIA AMERICA, INC, a corporation  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☒ by personal delivery on (date):

**MFS Legal, Inc.**

Neal F. Morrow III (SBN 295497)

Michael J. Avila (SBN 337521)

5318 East 2nd Street #490

Long Beach, CA 90803

Tel: (562) 379-2654

Email: lawclerk@calemonlawteam.com (contact)

eservice@calemonlawteam.com (documents)

Attorneys for Plaintiff

**BETHAN C. LAMB**

**ELECTRONICALLY FILED**

Superior Court of California,

County of Alameda

**08/17/2022 at 11:50:37 AM**

By: Angela Linhares,

Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

**BETHAN C. LAMB,**

Plaintiff,

vs.

**KIA AMERICA, INC, a corporation; and**

**DOES 1 through 10, inclusive,**

Defendants.

Case No.: **22CV016334**

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

Plaintiff, BETHAN C. LAMB, an individual alleges as follows:

1. Plaintiff is an individual residing in the City of OAKLAND, County of ALAMEDA, and the State of CALIFORNIA.

2. Defendant KIA AMERICA, INC is registered to do business in the State of CALIFORNIA.

3. Plaintiff does not know the true names and capacities, whether corporate, partnership, associate, individual, or otherwise of Defendants issued herein as Does 1 through 10, inclusive, under the provisions of section 474 of the California Code of Civil Procedure. Defendant Does 1 through 10, inclusive, are in some manner responsible for the acts, occurrences and transactions set forth herein, and are legally liable to Plaintiff. Plaintiff will seek leave to amend this



1 Complaint to set forth the true names and capacities of the fictitiously named Defendant together  
2 with appropriate charging allegations when ascertained.

3 4. All acts of corporate employees as alleged were authorized or ratified by an officer,  
4 director or managing agent of the corporate employer.

5 5. Each Defendant whether actually or fictitiously named herein was the principal, agent  
6 (actual or ostensible) or employee of each other Defendant and in acting as such principal or within  
7 the course and scope of such employment or agency, took some part in the acts and omissions  
8 hereinafter set forth by reason of which each Defendant is liable to Plaintiff for the relief prayed for  
9 herein.

10 6. On JULY 07, 2019, Plaintiff leased a 2019 KIA NIRO, VIN:  
11 KNDCC3LG8K2014880 ("vehicle").

12  
13 **FIRST CAUSE OF ACTION**

14 **(VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT) – BREACH**  
15 **OF EXPRESS WARRANTIES**

16  
17 **AGAINST ALL DEFENDANTS**

18 7. Plaintiff incorporates herein by reference each and every allegation contained in the  
19 preceding and succeeding paragraphs as though herein fully restated and realleged.

20 8. Plaintiff incorporates all preceding paragraphs as if set forth at length below.

21 9. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).

22 10. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

23 11. KIA AMERICA, INC is a "warrantor" as contemplated by Ca. Civ. Code § 1795.

24 12. Plaintiff's purchase of the Vehicle was a lease as defined by Cal. Civ. Code § 1791(n).

25 13. Defendants violated the Song-Beverly Consumer Warranty Act by failing to conform  
26 the Vehicle to the express written warranties within a reasonable number of repair attempts or  
27 within the warranty periods, and by failing to promptly replace the vehicle or make restitution to  
28 Plaintiff.

1 14. On 04/16/2021 Subject Vehicle was presented to Oakland Kia 25619 miles on it, the  
 2 Plaintiff indicated that a warning light had come on. The vehicle was at the repair facility for  
 3 20 days and drove it 81 miles. On 05/07/2021 Subject Vehicle was presented to Oakland Kia  
 4 with 25729. Plaintiff stated that the warning light was coming on. The repair facility found a  
 5 code for high voltage deviation and replaced the EV high voltage battery pack. The vehicle was  
 6 in the shop for 38 days. The defects, malfunctions, and nonconformities that were presented to  
 7 Defendant's authorized repair facilities multiple times and substantially impair the use, value,  
 8 and/or safety of the Vehicle.

9 15. Pursuant to Cal. Civ. Code §1793.2(d), Defendants must refund the price of the Vehicle  
 10 to Plaintiff.

11 16. Pursuant to Cal. Civ. Code §1794(a), Plaintiff is entitled to restitution.

12 17. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has  
 13 sustained and continues to sustain, actual, incidental, and consequential damages in the  
 14 approximate amount of the purchase price according to proof at trial.

15 18. The failure of Defendants to comply with the Song-Beverly Act was willful in that they  
 16 had actual knowledge of the Vehicle's defects, malfunctions, and nonconformities, knew of its  
 17 legal duties under the warranty act, but repeatedly refused to make necessary repairs and/or  
 18 provide compensation to the plaintiff.

19 19. Pursuant to Cal. Civ. Code §1794(c), Plaintiff is entitled to a civil penalty of two times  
 20 the amount of Plaintiff's actual damages.

21 20. Pursuant to Cal. Civ. Code §1794(d), Plaintiff is entitled to attorney's fees and expenses  
 22 reasonably incurred in connection with this action.

## 23 SECOND CAUSE OF ACTION

### 24 BREACH OF IMPLIED WARRANTY (SONG BEVERLY) AGAINST ALL 25 DEFENDANTS 26

27 21. Plaintiff incorporates all preceding paragraphs as if set forth at length below.  
 28

1 22. Pursuant to Cal. Civ. Code §1792, the Vehicle was accompanied by each Defendants'  
2 implied warranty that the goods are merchantable.

3 23. Pursuant to Cal. Civ. Code §1793, and because of the existence of the express warranty,  
4 Defendants may not disclaim, limit, or modify the implied warranties provided by the Song-  
5 Beverly – Act.

6 24. Defendants breached the implied warranty of merchantability as stated in Cal. Civ. Code  
7 §1791.1 and 1792 in the vehicle has malfunctions, and nonconformities render the Vehicle unfit  
8 for the ordinary purposes for which it is used, and it would not pass without objection in the trade.

9 25. Pursuant to Cal. Civ. Code §1794(a), Plaintiff is entitled to restitution.

10 26. As a direct and proximate result of the breach of the implied warranty of merchantability,  
11 Plaintiff has sustained and continues to sustain, actual, incidental, and consequential damages in  
12 the approximate amount of the purchase price according to proof at trial.

13 27. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has  
14 sustained and continues to sustain, actual, incidental, and consequential damages in the  
15 approximate amount of the purchase price according to proof at trial.

16 28. Pursuant to Cal. Civ. Code §1794(d), Plaintiff is entitled to attorney's fees and expenses  
17 reasonably incurred in connection with this action.

18 29. Plaintiff is a "buyer" of consumer goods under the Act.

19  
20 **THIRD CAUSE OF ACTION**

21 **BREACH OF EXPRESS WARRANTY – COMMERCIAL CODE – AGAINST ALL**  
22 **DEFENDANTS**

23 30. Plaintiff reincorporates the above allegations as if set forth at length below.

24 31. Defendant gave plaintiff a written warranty that the vehicle would be (a) free from  
25 defects of material and workmanship and (2) defendant would remedy the vehicle timely  
26 for any defects by presenting the vehicle to any authorized repair center.  
27  
28

1 32. The subject vehicle did not perform as promised and did not meet the quality of the  
2 written warranty, nor meet the standard described in the written warranty.

3 33. Plaintiff took reasonable steps to notify Defendants that the vehicle was not as  
4 represented.

5 34. Defendants failed to honor the terms of its express warranty

6 35. Plaintiff was harmed as a result.

7  
8 36. The failure of the vehicles to be as represented was a substantial factor is causing  
9 Plaintiff's harm

10 37. Plaintiff is entitled to damages provided by Com Code for breach of warranty being the  
11 difference at the time and place of acceptance between the value of the vehicle as --  
12 accepted and the value they would have had if they had been as warranted.  
13  
14  
15

#### 16 **FOURTH CAUSE OF ACTION**

##### 17 **(Violation of the Federal Magnuson-Moss Warranty Act - Against All Defendants)**

18 38. Plaintiff incorporates herein by reference each and every allegation contained in the  
19 preceding and succeeding paragraphs as though herein fully restated and realleged.  
20

21 39. Plaintiff is a "consumer" as defined in the Magnuson-Moss Warranty Act (referred to  
22 as "Mag-Moss"), 15 U.S.C. § 2301(3).  
23

24 40. Defendant, KIA AMERICA, INC is a "supplier" and "warrantor" as defined in the  
25 Mag-Moss Act, 15 U.S.C. § 2301(4), 15 U.S.C. § 2301(5).  
26

27 41. The vehicle is a "consumer product" as defined in the Mag-Moss Act, 15 U.S.C.  
28 §2301(1). In addition to the express warranty, in connection with the lease of the

1 vehicle to Plaintiff, an implied warranty of merchantability was created under  
2 California law. The vehicle's implied warranties were not disclaimed using a Buyer's  
3 Guide displayed on the vehicle; thus any purported disclaimers were ineffective  
4 pursuant to 15 U.S.C. § 2308(c).  
5

6  
7 **FIFTH CAUSE OF ACTION**  
8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**  
9 **AGAINST ALL DEFENDANTS**  
10

11 42. Plaintiff re-alleges the above allegations as if set forth below in full.

12 43. Plaintiff and Defendants are each "person[s]" as defined by California Business &  
13 Professions Code § 17201. California Bus. & Prof. Code § 17204 authorizes a private  
14 right of action on both an individual and representative basis.

15 44. "Unfair competition" is defined by Business and Professions Code Section § 17200 as  
16 encompassing several types of business "wrongs," many of which are at issue here:

- 17 (1) an "unlawful" business act or practice,  
18 (2) an "unfair" business act or practice,  
19 (3) a "fraudulent" business act or practice, and  
20 (4) "unfair, deceptive, untrue or misleading advertising."

21 45. The definitions in § 17200 are drafted in the disjunctive, meaning that each of these  
22 "wrongs" operates independently from the others.

23 46. Plaintiff has no speedy adequate remedy at law and damages would not adequately  
24 compensate her for the ongoing wrongs committed by Defendants.

25 47. By and through Defendant's conduct alleged in further detail above and herein,  
26 Defendants engaged in conduct which constitutes (a) unlawful and (b) unfair business  
27 practices prohibited by Bus. & Prof. Code § 17200 et seq.  
28

**“UNLAWFUL” PRONG**

- 1
- 2 48. As a result of Defendant’s acts and practices described herein, Defendants have violated
- 3 California’s Unfair Competition Law, Business & Professions Code §§ 17200 et seq.,
- 4 which provides a cause of action for an “unlawful” business act or practice perpetrated on
- 5 members of the California public.
- 6 49. Defendants have other reasonably available alternatives to further its legitimate business
- 7 interest, other than the conduct described above
- 8 50. Plaintiff reserves the right to allege other violations of law, which constitute other
- 9 unlawful business practices or acts, as such conduct is ongoing and continues to this date.
- 10

11

12 **“UNFAIR” PRONG**

- 13 51. Defendant’s actions and representations constitute an “unfair” business act or practice
- 14 under § 17200 in that Defendant’s conduct is substantially injurious to consumers, offends
- 15 public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of
- 16 the conduct outweighs any alleged benefits attributable to such conduct. Without
- 17 limitation, it is an unfair business act or practice for Defendants to knowingly or
- 18 negligently
- 19 (1) fail to provide repair facilities to service vehicles to conform to the express
- 20 warranties reasonably close to where Defendant’s vehicle is sold,
- 21 (2) provide their authorized repair facilities service and repair literature to allow
- 22 them to conform the vehicles to the express warranties,
- 23 (3) inform consumers of their warranty rights on their repair orders, and
- 24 (4) pay their authorized repair facilities for work done under the express warranty.
- 25 (5) Trying to coerce Plaintiff and other members of the public to sign
- 26 confidentiality clauses and
- 27 52. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this
- 28 action, and as set forth above, Defendants have committed acts of unfair competition as

defined by Cal. Bus. & Prof. Code §§ 17200 et seq., as alleged further detail above and herein.

53. Plaintiff could not have reasonably avoided the injury suffered herein. Plaintiff reserves the right to allege further conduct that constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date, as Defendants continue to violate the provisions of the Song-Beverly act.

#### **“FRAUDULENT” PRONG**

54. California Business & Professions Code § 17200 prohibits any “fraudulent ... business act or practice.” In order to prevail under the “fraudulent” prong of the UCL, a consumer must allege that the fraudulent business practice was likely to deceive members of the public.

55. The test for “fraud” as contemplated by California Business and Professions Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200 violation can be established even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage.

56. Here, consumers are likely to be deceived by the acts described above in this complaint.

57. California consumers were never informed of their rights pursuant to the Song-Beverly Acts standards.

58. In addition, Defendant’s oral misrepresentations also deceived Plaintiff to believe that Plaintiff would receive a benefit by purchasing a Vehicle from them under warranty.

59. Despite the passage of time, Plaintiff has received no such benefit from the warranty of the vehicle.

60. Plaintiff is entitled to injunctive relief to bring Defendants in conformity with the law.


61. Plaintiff is further entitled to preliminary relief to enforce Defendants’ compliance with its legal obligations during the pendency of the within action as Plaintiff has both no adequate remedy at law, has and continues to suffer irreparable injury, and damages would be completely inadequate.

1 **WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:**

- 2 (1) A declaration that the sales contract is rescinded;
- 3 (2) A declaration that Defendants have been given a reasonable number of repair
- 4 attempts and/or days to conform the Vehicle to the warranty;
- 5 (3) Actual damages of \$39,300.00 according to proof;
- 6 (4) Consequential and incidental damages according to proof;
- 7 (5) Restitution of all consideration given by Plaintiff and or paid out toward the
- 8 Vehicle.
- 9 (6) Civil Penalties under the Song-Beverly Act in the amount of two times actual
- 10 damages;
- 11 (7) Reasonable attorney's fees according to statute and contract.
- 12 (8) Prejudgment interest at the highest maximum legal rate;
- 13 (9) A temporary restraining order and/or preliminary injunction;
- 14 (10) Costs and expenses reasonably incurred in connection with this action; and
- 15 (11) Such other relief as the Court deems just and proper.

16 DATED: August 4, 2022

MFS Legal, Inc.

17  
18   
19 Neal F. Morrow III  
20 Attorney for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28



|   |  |  |  |
|---|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>Neal F. Morrow III (SBN 295497)<br>MFS Legal, Inc.<br>5318 East 2nd Street #490 Long Beach, CA 90803<br>TELEPHONE NO.: (562) 379-2654 FAX NO. (Optional): 5622651112<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (Name): BETHAN C. LAMB |  | <b>FOR COURT USE ONLY</b><br><br><b>ELECTRONICALLY FILED</b><br>Superior Court of California,<br>County of Alameda<br><b>08/17/2022 at 11:50:37 AM</b><br>By: Angela Linhares,<br>Deputy Clerk |  |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA<br>STREET ADDRESS: 1225 Fallon Street<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Oakland, CA 94612<br>BRANCH NAME: Rene C. Davidson County Courthouse  |  | CASE NUMBER:<br><div style="font-size: 1.2em; font-weight: bold;">22CV016334</div>   |  |
| CASE NAME:<br>BETHAN C. LAMB v. KIA AMERICA, INC., et. al.  |  |  |  |
| <b>CIVIL CASE COVER SHEET</b><br><input checked="" type="checkbox"/> <b>Unlimited</b><br>(Amount demanded exceeds \$25,000)   |  | <b>Complex Case Designation</b><br><input type="checkbox"/> Counter <input type="checkbox"/> Joinder<br>Filed with first appearance by defendant<br>(Cal. Rules of Court, rule 3.402)          |  |
| <input type="checkbox"/> <b>Limited</b><br>(Amount demanded is \$25,000)  |  | JUDGE:<br>DEPT.:   |  |

Items 1–6 below must be completed (see instructions on page 2).

|  |   |   |
|--|---|---|
| 1. Check one box below for the case type that best describes this case:  |   |   |
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input checked="" type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400–3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 5
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 2, 2022

Neal F. Morrow III

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**CIVIL CASE COVER SHEET**

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal.

## Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims

(*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

|   |  |   |
|---|--|---|
| <b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b>   |  | Reserved for Clerk's File Stamp   |
| COURTHOUSE ADDRESS:<br>Rene C. Davidson Courthouse<br>Administration Building, 1221 Oak Street, Oakland, CA 94612 |  | <b>FILED</b><br>Superior Court of California<br>County of Alameda<br><b>08/17/2022</b><br>Glad Filke, Executive Officer/Clerk of the Court<br>By: <u>A. Linhares</u> Deputy |
| PLAINTIFF(S):<br>Bethan C. Lamb   |  |   |
| DEFENDANT(S):<br>KIA AMERICA, INC, a corporation  |  |   |
| <b>NOTICE OF CASE ASSIGNMENT</b>  |  | CASE NUMBER:<br><b>22CV016334</b>   |

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

ASSIGNED JUDGE: Jeffrey Brand  
 DEPARTMENT: 22  
 LOCATION: Rene C. Davidson Courthouse  
 Administration Building, 1221 Oak Street, Oakland, CA 94612  
 PHONE NUMBER: (510) 267-6938  
 FAX NUMBER:  
 EMAIL ADDRESS: Dept22@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedures section 170.6 must be exercised within the time period by law. (See Code of Civ. Proc. §§ 170.6, subd. (a.)(2) and 101.3)

**NOTICE OF NONAVAILABILITY OF COURT REPORTERS:** Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording. Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

**GENERAL PROCEDURES**

Following assignment of a civil case to a specific department, all pleadings, papers, forms, documents and writings can be submitted for filing at either Civil Clerk's Office, located at the Rene C. Davidson Courthouse, Room 109, 1225 Fallon Street, Oakland, California, 94612, and the Hayward Hall of Justice, 24405 Amador Street, Hayward, California, 94544 and through Civil e-filing. Information regarding Civil e-filing can be found on the courts website. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

**NOTICE OF CASE ASSIGNMENT**

ASSIGNED FOR ALL PURPOSES TO  
JUDGE Jeffrey Brand  
DEPARTMENT 22

All parties are expected to know and comply with the Local Rules of this Court, which are available on the court's website at [http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules\(1\)](http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules(1)) and with the California Rules of Court, which are available at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processed (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days." The court's website contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

#### COURT RESERVATIONS

The use of the Court Reservation System (CRS) is now mandated in many civil courtrooms within the Alameda County Superior Court. Instead of calling or emailing the courtroom to make a reservation, parties with a case assigned to a courtroom using CRS are directed to utilize CRS to make and manage their own reservations, within parameters set by the courtrooms. CRS is available 24 hours a day, seven days a week and reservations can be made from a computer or smart phone. Please note, you are prohibited from reserving more than one hearing date for the same motion.

Prior to scheduling any motion on CRS, including any Applications for Orders for Appearance and Examination, or continuing any motion, please review the online information (if any) for the courtroom in which you are reserving. There may be specific and important conditions associated with certain motions and proceedings. Information is available on the court's eCourt Public Portal at [www.eportal.alameda.courts.ca.gov](http://www.eportal.alameda.courts.ca.gov).

Chad Finke, Executive Officer / Clerk of the Court

By A. Linhares, Deputy Clerk

|   |  |  |
|---|--|--|
| <b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b>   |  | Reserved for Clerk's File Stamp<br><br><b>FILED</b><br>Superior Court of California<br>County of Alameda<br>08/17/2022<br>Clad File, Executive Officer/Clerk of the Court<br>By: <u>A. Linhares</u> Deputy |
| COURTHOUSE ADDRESS:<br>Rene C. Davidson Courthouse<br>Administration Building, 1221 Oak Street, Oakland, CA 94612 |  |  |
| PLAINTIFF:<br>Bethan C. Lamb  |  |  |
| DEFENDANT:<br>KIA AMERICA, INC, a corporation   |  | CASE NUMBER:<br>22CV016334   |
| <b>NOTICE OF CASE MANAGEMENT CONFERENCE</b>   |  |  |

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (Cal. Rules of Court, 3.110(b)).

Give notice of this conference to all other parties and file proof of service.

Your Case Management Conference has been scheduled on:

|  |               |           |
|--|---------------|-----------|
| Date: 01/09/2023   | Time: 2:30 PM | Dept.: 22 |
| Location: Rene C. Davidson Courthouse<br>Administration Building, 1221 Oak Street, Oakland, CA 94612 |               |           |

TO DEFENDANT(S)/ATTORNEY(S) FOR DEFENDANT(S) OF RECORD:

The setting of the Case Management Conference does not exempt the defendant from filing a responsive pleading as required by law, you must respond as stated on the summons.

TO ALL PARTIES who have appeared before the date of the conference must:

Pursuant to California Rules of Court, 3.725, a completed Case Management Statement (Judicial Council form CM-110) must be filed and served at least 15 calendar days before the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record.

**Meet and confer**, in person or by telephone as required by Cal. Rules of Court, rule 3.724.

**Post jury fees** as required by Code of Civil Procedure section 631.

If you do not follow the orders above, the court may issue an order to show cause why you should not be sanctioned under Cal. Rules of Court, rule 2.30. Sanctions may include monetary sanctions, striking pleadings or dismissal of the action.

The judge may place a Tentative Case Management Order in your case's on-line register of actions before the conference. This order may establish a discovery schedule, set a trial date or refer the case to Alternate Dispute Resolution, such as mediation or arbitration. Check the court's eCourt Public Portal for each assigned department's procedures regarding tentative case management orders at <https://portal.alameda.courts.ca.gov>.

|  |  |
|--|--|
| <p align="center"><b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b></p>                      | <p align="center">Reserved for Clerk's File Stamp</p>  |
| <p>COURTHOUSE ADDRESS:<br/>Rene C. Davidson Courthouse<br/>1225 Fallon Street, Oakland, CA 94612</p> | <p align="center"><b>FILED</b><br/>Superior Court of California<br/>County of Alameda<br/>08/17/2022</p> |
| <p>PLAINTIFF/PETITIONER:<br/>Bethan C. Lamb</p>  | <p>Chad Finke, Executive Officer / Clerk of the Court<br/>By: <u>A. Linhares</u> Deputy</p>              |
| <p>DEFENDANT/RESPONDENT:<br/>KIA AMERICA, INC, a corporation</p>                                     |  |
| <p align="center"><b>CERTIFICATE OF MAILING</b></p>  | <p>CASE NUMBER:<br/>22CV016334</p>   |

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Neal F. Morrow  
MFS Legal Inc.  
5318 E 2nd Street  
#490  
Long Beach, CA 90803

Chad Finke, Executive Officer / Clerk of the Court

Dated: 08/17/2022

By:

A. Linhares, Deputy Clerk

**CERTIFICATE OF MAILING**

# EXHIBIT 2



SJL LAW LLP  
 Julian G. Senior (SBN: 219098)  
 Marcelo Lee (SBN: 271980)  
 Corinne D. Orquiola (SBN: 226969)  
 841 Apollo Street, Suite 300  
 El Segundo, CA 90245  
 Tel. No.: 424.290.0720  
 Fax No.: 424.290.0721  
[mail@sjllegal.com](mailto:mail@sjllegal.com) (service at any other email address is invalid)

Attorneys for Defendant KIA AMERICA, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF ALAMEDA**

|                                   |   |  |
|-----------------------------------|---|--|
| BETHAN C. LAMB,                   | ) | <b>CASE NO.: 22CV016334</b>            |
|                                   | ) |  |
| Plaintiff,                        | ) | Assigned to: Hon. Jeffrey Brand        |
|                                   | ) | Department: 22                         |
| vs.                               | ) |  |
|                                   | ) | <b>DEFENDANT KIA AMERICA, INC.'S</b>   |
| KIA AMERICA, INC, a corporations; | ) | <b>ANSWER TO PLAINTIFF'S COMPLAINT</b> |
| and DOES 1 through 10, inclusive, | ) | <b>FOR DAMAGES AND INJUNCTIVE</b>      |
|                                   | ) | <b>RELIEF; JURY DEMAND</b>             |
| Defendants.                       | ) |  |
|                                   | ) | Action Filed: August 17, 2022          |
|                                   | ) | Trial: None                            |
|                                   | ) |  |

Defendant Kia America ("KA"), for itself alone and for no other parties, hereby answers Plaintiff Bethan C. Lamb's Complaint for Damages and Injunctive Relief as follows:

Under the provisions of Code of Civil Procedure, Section 431.30(d), KA denies each and every allegation, both specifically and generally, of each cause of action contained in Plaintiff's Complaint on file herein and the whole thereof and denies that Plaintiff was damaged in any sum or sums, or at all.

///

///



**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Cause of Action)**

1. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against KA.

**SECOND AFFIRMATIVE DEFENSE**

**(Statute of Limitation)**

2. KA is informed and believes, and on that basis alleges, that Plaintiff is barred from bringing this action by the statutes of limitation contained in Code of Civil Procedure, Sections 337, 338, 339 and 340 and Commercial Code, Section 2725.

**THIRD AFFIRMATIVE DEFENSE**

**(Misuse, Abuse, Unauthorized or Unreasonable Use)**

3. KA is informed and believes, and on that basis alleges, that Plaintiff and/or others misused or abused the subject vehicle, or engaged in unauthorized or unreasonable use of the subject vehicle, contrary to KA's approval or consent and Plaintiff's damages, if any, were proximately caused by such abuse and neglect of the vehicle.

**FOURTH AFFIRMATIVE DEFENSE**

**(No Defect - Warranty Exclusion)**

4. KA is informed and believes, and on that basis alleges, that the damages asserted in Plaintiff's Complaint were not the result of any defect in material or workmanship in any vehicle distributed by KA or that the subject vehicle's use, safety or value was impaired. Specifically, KA alleges that after appropriate discovery, one or more of the stated specific warranty exclusions may be applicable.

///

///

///

///

///

**FIFTH AFFIRMATIVE DEFENSE**

**(Lack of Maintenance)**

5. KA is informed and believes, and on that basis alleges, that Plaintiff is precluded from recovery by reason of Plaintiff's failure to maintain and service the subject vehicle in conformance with the requirements and recommendations of the owner's manual and/or warranty booklet.

**SIXTH AFFIRMATIVE DEFENSE**

**(Terms of Limited Warranty)**

6. KA is informed and believes, and on that basis alleges, that by the terms of the limited warranty for the subject vehicle, KA is not liable for incidental or consequential damages.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Third Party Dispute Resolution Process)**

7. KA is informed and believes, and on that basis alleges, that Plaintiff and/or the owner of the subject vehicle received timely notice of the availability of a third-party dispute resolution process, and that no effort was made to use such process.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Civil Penalty)**

8. KA is informed and believes, and on that basis alleges, that it possesses a qualified third-party dispute resolution process, thereby barring Plaintiff from any civil penalty in this lawsuit.

**NINTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

9. KA is informed and believes, and on that basis alleges, that Plaintiff is barred in whole or in part under the doctrine of unclean hands.

///

///

///

**TENTH AFFIRMATIVE DEFENSE****(Fit for Intended Purpose)**

10. KA is informed and believes, and on that basis alleges, that the subject vehicle remained fit for its intended purpose of providing transportation. Accordingly, Plaintiff is not entitled to relief for breach of the implied warranty of merchantability.

**ELEVENTH AFFIRMATIVE DEFENSE****(No Representation Beyond Express Warranty)**

11. KA is informed and believes, and on that basis alleges that it did not represent to Plaintiff that the subject vehicle had characteristics and benefits it did not have and/or that its express warranty conferred or involved remedies or obligations it did not have.

**TWELFTH AFFIRMATIVE DEFENSE****(Requisite Repair Attempts)**

12. KA is informed and believes, and on that basis alleges, that the subject vehicle has not been out of service the requisite number of days or subject to repair for the same nonconformity the requisite number of times by KA within eighteen months from delivery to Plaintiff or the accrual of 18,000 miles on the odometer.

**THIRTEENTH AFFIRMATIVE DEFENSE****(Mitigation of Damages)**

13. KA is informed and believes, and on that basis alleges, that Plaintiff has made no efforts to attempt to mitigate any damages or protect the value of the subject vehicle, and as such, any damages awarded would be reduced accordingly.

**FOURTEENTH AFFIRMATIVE DEFENSE****(Alteration of Subject Vehicle)**

14. The subject vehicle was not defective or unmerchantable when it left the possession, custody and control of KA. Any damage was caused by changes and alterations made to the subject vehicle by persons other than KA.

///

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(No Written Notice)**

15. KA is informed and believes, and on that basis alleges, that Plaintiff is barred from the recovery of a civil penalty by reason of Plaintiff's failure to serve written notice pursuant to Civil Code, Section 1794(e)(3).

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(No Opportunity to Cure)**

16. KA is informed and believes, and on that basis alleges, that Plaintiff has failed to provide reasonable opportunity to cure any alleged defect as required by 15 United States Code, Section 2310(e).

**SEVENTEETH AFFIRMATIVE DEFENSE**

**(No Magnuson-Moss Violation)**

17. KA is informed and believes, and on that basis alleges, that Plaintiff has not utilized KA's qualified third party dispute resolution program as required in order to assert a cause of action under the Magnuson-Moss Warranty Act, 15 U.S.C. Section 2031 et seq.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Prevention of Performance)**

18. KA is informed and believes, and on that basis alleges, that KA was prevented and/or delayed from performing the obligations alleged in Plaintiff's Complaint by Plaintiff and/or others. Thus, the performance of the obligations or the delay thereof, if any, are excused and/or KA is entitled to all benefits which it would have obtained if performance had been completed.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Delay Due to Conditions beyond Control)**

19. KA is informed and believes, and on that basis alleges, that the delay in service or repair of the subject vehicle, if any, was caused by conditions beyond the control of KA, and the subject vehicle was returned as soon as possible following the

1 termination of these conditions.

2 **TWENTIETH AFFIRMATIVE DEFENSE**

3 **(Additional Affirmative Defenses)**

4 20. KA alleges that it may have additional affirmative defenses available that  
5 are not now fully known. KA reserves the right to assert additional affirmative defenses  
6 after they have been determined.


7 WHEREFORE, KA prays as follows:

- 8 1. For dismissal of Plaintiff's Complaint with prejudice;  
9 2. For judgment in favor of KA against Plaintiff;  
10 3. For the costs of suit herein; and,  
11 4. For such other and further relief as the Court may deem just and proper.

12  
13 DATED: September 22, 2022

SJL LAW LLP

14  
15  
16 By:

  
\_\_\_\_\_  
Julian G. Senior  
Marcelo Lee  
Corinne D. Orquiola  
Attorneys for Defendant  
KIA AMERICA, INC.

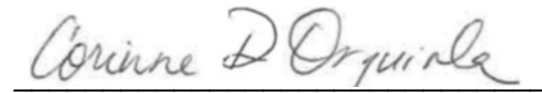
**JURY DEMAND**

Defendant KIA AMERICA, INC. demands a jury trial.

DATED: September 22, 2022

SJL LAW LLP

By:



Julian G. Senior  
Marcelo Lee  
Corinne D. Orquiola  
Attorneys for Defendant  
KIA AMERICA, INC.

**PROOF OF SERVICE**  
**CCP 1013A(3) (Revised 5/1/88)**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 841 Apollo Street, Suite 300, El Segundo, CA 90245.

On September 22, 2022, I served the foregoing documents described as **DEFENDANT KIA AMERICA, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF; JURY DEMAND** on all interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

☐ **BY MAIL (CCP §1013(a) and §2015.5):** I served the documents by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's business practice for collecting and processing documents for mailing. On the same day the document is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage date is more than 1 day after the date of deposit for mailing in affidavit.

☐ **BY OVERNIGHT DELIVERY (CCP §1013(c) and §2015.5):** I sealed such documents in separate envelopes to each addressee and deposited each for collection by mailing via overnight mail/next day delivery in a box or other facility regularly maintained by the U.S. Postal Service or an Express Service carrier, or delivered to an authorized carrier or driver authorized by the U.S. Postal Service or an Express service carrier to receive documents, with delivery fees paid or provided.

☐ **BY FACSIMILE (CRC 2.306, CCP §2015.5 and CCP §1013(e)):** The document(s) were transmitted by facsimile transmission to each of the parties at the facsimile number(s) listed on the attached service list and the transmission(s) reported as complete and without error. The facsimile machine I used complied with the California Rules of Court, Rule 2.306(g) and I printed a record of the transmission(s), a copy of which is attached to the original of this declaration.

☒ **BY ELECTRONIC MAIL (CRC 2.251 and CCP §1010.6(a)):** The document(s), listed *supra*, were served electronically and the transmission was reported as complete and without error to each of the parties at the e-mail address(es) listed below.

Executed on September 22, 2022, at El Segundo, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
 \_\_\_\_\_  
 Johncen Gonzales

**SERVICE/MAILING LIST**

**BETHAN C. LAMB v. KIA MOTORS AMERICA, INC.**  
**Alameda County Superior Court Case No.: 22CV016334**

John C. Feely Attorneys for Plaintiff  
Neal F. Morrow III  
MFS Legal Inc. BETHAN C. LAMB  
5318 East 2<sup>nd</sup> Street, #490  
Long Beach, CA 90803  
Tel. No.: 562.307.8055  
Fax No.: 562.265.1112  
Email: [eservice@calemonlawteam.com](mailto:eservice@calemonlawteam.com)





## Order #18969613: eFiling

Submitted: 9/22/2022 11:14 AM PT



### Under court clerk review

9/22/2022 11:14 AM PT

Court Transaction #22AA00119908

**MESSAGE FROM ONE LEGAL:** The court has received your filing. This status will be updated and you will receive an email immediately upon completion of the court clerk's review. Although court processing times vary, the court filing date for accepted filings will reflect the date this order was submitted.

## Documents

### Returned (0)

Documents will be available here once they are provided by the court's system.

### Your Files (1)

| Document Title | Document Type | Pages | Status   |
|----------------|---------------|-------|----------|
| Answer         | Answer        | 9     | Uploaded |

## Case Information

### Court

Alameda County, Superior Court of California (Oakland Civil)

### Number

22CV016334

### Title

LAMB vs KIA AMERICA, INC, A CORPORATION

Confirmation Receipt #27272321

Accessibility statement (<https://www.onelegal.com/accessibility/>) | Privacy policy

(<https://www.onelegal.com/privacy/>) | Terms of service (<https://www.onelegal.com/terms/>)

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on **September 23, 2022** a true and correct copy of the foregoing **DECLARATION OF JULIAN G. SENIOR, IN SUPPORT OF DEFENDANT KIA AMERICA, INC.'S NOTICE OF REMOVAL; SUPPORTING EXHIBITS 1-2** was filed with the Clerk using the CM/ECF system, which will provide notice to the following counsel of record:

John C. Feely

**Attorneys for Plaintiff**

Neal F. Morrow III

MFS Legal Inc.

BETHAN C. LAMB

5318 East 2<sup>nd</sup> Street, #490

Long Beach, CA 90803

Tel. No.: 562.307.8055

Fax No.: 562.265.1112

Email: [eservice@calemonlawteam.com](mailto:eservice@calemonlawteam.com)